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The Roles of Regional Law of the Sea

MARK W. JANIS*

INTRODUCTION

This paper draws together the record of regional law of the sea from recent regional developments, scholarly studies and recommendations, and the law of the sea debate. It analyzes the different roles which regional law of the sea might play and has played. It evaluates the prospects for regional law of the sea in different geographical areas and speculates about the contributions which regional law of the sea might make to the unfolding legal order of the oceans.

Regional law of the sea is, as this paper shows, increasingly important. In one sense, this new importance is a sign of failure, the failure of the nations and their diplomats to write a new global maritime order. The on-going law of the sea debate was initiated

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in hopes that coastal States might be forestalled from carving up the seas for reasons of economic interest and that an international oceanic authority might be constituted to authoritatively distribute the wealth of the oceans. But it seems that coastal States will effectively claim zones of at least 200 miles for at least economic purposes and that there remain great differences among the nations about the proper nature of any international machinery to govern the shrinking remainder of the seas. Regional law of the sea is increasingly important because global law of the sea is increasingly improbable.

But, in another sense, the new significance of regional law of the sea is a sign of optimism, an optimism based on hopes that regional maritime orders can avoid some of the worst effects of the legal chaos feared if unilateral national claims make up the new pattern of ocean law. Regional law of the sea, however, is not a single phenomenon. Rather it has developed in three roles as a means to deal with three sorts of needs. These three roles are examined in turn: first, regional law of the sea may be a means of promoting shared legal claims of regional States; second, regional law of the sea may be a means of providing for the efficient use of regional waters; third, regional law of the sea may be a means of sharing ocean resources with regional land-locked or shelf-locked States.

REGIONAL LAW OF THE SEA AS A MEANS OF PROMOTING SHARED LEGAL CLAIMS

In an uncomplicated way, regional law of the sea may be no more at times than the coordination and promotion of the legal claims of nations within a region. For reasons of similar historical background, shared geographical situations, or mutual political, economic, or security concerns, States within a region may be in much more of an accord with each other than they are with nations outside the area. By banding together in making international legal claims, regional States not only iron out differences among themselves for the sake of harmony, but for the purpose of facing the world together—acting more effectively as a unit.

The region which most traditionally has displayed this first sort of regional law of the sea is Latin America and its sub-regions. The most famous regional Latin American law of the sea claim is, of course, to 200-mile territorial seas. The first regional origin of the extended territorial waters claim is the Declaration of Panama in 1939, when, at the urging of the United States, the American States created "a defense zone of 300 miles around the hemisphere with the 'inherent right' to keep the zone free of any hostile act by non-

American belligerent nations."¹ This concept of a maritime defense zone was again embodied in 1947 in the Rio Treaty. After the unilateral American claim in 1945 to jurisdiction over the continental shelf, the Latin American States followed suit with unilateral claims of their own to the shelf, and, in 1947 by Chile and Peru, to full sovereignty over 200 miles. The individual Latin American States argued that the Declaration of Panama demonstrated a hemispheric consensus favoring extended maritime jurisdictions.² Individual claims to 200-mile seas were bolstered in 1952 by a sub-regional claim by Chile, Ecuador, and Peru, known as the Santiago Declaration:

(I) Owing to the geological and biological factors affecting the existence, conservation and development of the marine fauna and flora of the waters adjacent to the coasts of the declarant countries, the former extent of the territorial sea and contiguous zone is insufficient to permit of the conservation, development and use of those resources to which the coastal countries are entitled.

(II) The Governments of Chile, Ecuador and Peru therefore proclaim as a principle of their international maritime policy that each of them possesses a sole sovereignty and jurisdiction over the area of sea adjacent to the coast of its own country and extending not less than 200 nautical miles from the said coast. . . .³

As the Declaration of Panama was a regional maritime claim against the then-participants in the Second World War, so the Santiago Declaration was a sub-regional maritime claim against developed distant-water fishing States, especially the United States. By standing together, Chile, Ecuador, and Peru hoped to more effectively promote their respective 200-mile claims against the United States. The decision of these three States to stand together was made more explicit in the Lima Declaration of 1954, which provided for joint co-operation and legal defence:

1. Chile, Ecuador and Peru shall consult with one another for the purpose of upholding, in law, the principle of their sovereignty over the maritime zone to a distance of not less than 200 nautical miles

. . . .

1. Bath, *Latin American Claims on Living Resources of the Sea*, 27 *INTER-AMERICAN ECONOMIC AFFAIRS* No. 4, at 61-62 (1974) [hereinafter cited as Bath].

2. *Id.* at 59-85.

3. Agreement between Chile, Ecuador and Peru, signed at the First Conference on the Exploitation and Conservation of the Maritime Resources of the South Pacific, Santiago, August 18, 1952, A/AC.135/10/Rev. 1, at 11-12 (1968).

2. If any complaints or protests should be addressed to any of the Parties or if proceedings should be instituted against a Party in a court of law or in an arbitral tribunal, whether possessing general or specific jurisdiction, the contracting countries undertake to consult with one another concerning the case to be presented for the defence and furthermore bind themselves to co-operate fully with one another in the joint defence.

3. In the event of a violation of the said maritime zone by force, the State affected shall report the event immediately to the other Contracting Parties for the purpose of determining what action should be taken to safeguard the sovereignty which has been violated. . . .⁴

Now more than twenty years old, this sub-regional claim by States, the coasts of which make up more than 90 percent of the Pacific shore of South America, is an excellent demonstration of the creation of a claim to regional law of the sea for the sake of promoting regional preferences against other States. Although the United States has never accepted the claim to 200-mile territorial seas, other American States (Argentina, Brazil, Uruguay, Panama, El Salvador, and Nicaragua) joined with Chile, Ecuador, and Peru in the Montevideo Declaration of 1970, which endorsed 200-mile jurisdictions and declared their "right to establish the limits of their maritime sovereignty and jurisdiction in accordance with their geographical and geological characteristics and with the factors governing the existence of marine resources and the need for their rational utilization."⁵

Thus, the sub-regional claim of the Pacific South American countries broadened into a claim of many States within the Latin American region. Indeed, it may not unreasonably be argued that all that prevents the principle from becoming one for all the hemisphere is the opposition of the United States.⁶ The declarations of Santiago, Lima, and Montevideo are attempts, if not to extinguish the antagonism of the United States, at least to disarm the opponent by making it clear that action taken against one claimant offends all claimants. Insofar as a non-signatory State like the United States seeks to minimize the hostility of the signatories, it will not take forceful measures against the emerging regional consensus. Perhaps one of the reasons why Iceland faced British gunboats and Latin America did not face American gunboats is that Iceland acted alone while the Latin Americans acted together.

4. Agreement supplementary to the Declaration of Sovereignty over the Maritime Zone of Two Hundred Miles, signed at the Second Conference on the Exploitation and Conservation of the Maritime Resources of the South Pacific, Lima, December 4, 1954, A/AC.135/10/Rev. 1, at 12-13 (1968).

5. Montevideo Declaration on the Law of the Sea, May 8, 1970, A/AC.138/34, at 2-4 (1971).

6. Bath, *supra* note 1, at 85.

Regional legal cooperation to promote shared preferences has been a frequent occurrence in the course of the United Nations law of the sea debate. Not surprisingly, the Latin Americans have maintained their 200-mile claim not only against the United States but in the international context as well.⁷ And another region has joined the Latin Americans in this first category.

Since 1972, the Africans have made a regional claim for an exclusive economic zone. In that year the African States Regional Seminar on the Law of the Sea at Yaoundé concluded:

(1) The African States have the right to determine the limits of their jurisdictions over the Seas adjacent to their coasts in accordance with reasonable criteria which particularly take into account their own geographical, geological, biological and national security factors.

(2) The Territorial Sea should not extend beyond a limit of 12 nautical miles.

(3) The African States have equally the right to establish beyond the Territorial Sea an Economic Zone over which they will have an exclusive jurisdiction for the purpose of control regulation and national exploitation of the living resources of the Sea and their reservation for the primary benefit of their peoples and their respective economies, and for the purpose of the prevention and control of pollution.

The establishment of such a zone shall be without prejudice to the following freedoms: freedom of navigation, freedom of overflight, freedom to lay submarine cables and pipelines. . . .

The Economic Zone embodies all economic resources comprising both living and non-living resources such as oil, gas and other mineral resources.⁸

The Yaoundé Conclusions were seconded by the Council of Ministers, the highest body of the Organization of African Unity, in its Declaration on the Issues of the Law of the Sea at Addis Ababa in 1973. The Addis Ababa Declaration also called for exclusive economic zones and added that the proper width for such a zone was 200 miles:

That the African States recognize the right of each coastal State to establish an exclusive economic zone beyond their territorial seas

7. Friedheim & Kadane, *Quantitative Content Analysis of the United Nations Seabed Debate: Methodology and a Continental Shelf Case Study*, 24 INTERNATIONAL ORGANIZATION 492-93 (1970).

8. African States Regional Seminar on the Law of the Sea, Yaoundé, Conclusions of the Regional Seminar on the Law of the Sea, June 20-30, 1972, A/AC.138/79, reprinted in 12 INT'L LEGAL MATERIALS 210, 212 (1973).

whose limits shall not exceed 200 nautical miles, measured from the baselines establishing their territorial seas;

That in such zones the coastal States shall exercise permanent sovereignty over all the living and mineral resources and shall manage the zone without undue interference with the other legitimate uses of the sea: namely, freedom of navigation, overflight, and laying of cables and pipelines.⁹

The African position on a 200-mile exclusive economic zone not only stands as a good expression of regional law of the sea as a means of promoting shared regional preferences but is a realistic compromise between the 200-mile territorial sea claims of the Latin Americans and the narrow jurisdictional preferences of the developed countries. It is likely that the pronouncements at Yaoundé and Addis Ababa were meant to serve these two purposes, both to establish African regional law and to compromise the international law of the sea debate. As such, the exclusive economic zone might be the first law of the sea principle originally adopted on an African basis which becomes general international law. Much of the traditional law of the sea can be viewed as the broad adoption of European regional principles and many 19th century modifications such as the laws of neutrality might be seen as American regional preferences accepted on a global basis.

Some regions and sub-regions have been less successful than Latin America and Africa in promoting shared legal claims. In Asia, for example, where national maritime policies "vary very considerably," there has been very little regional co-operation in promoting joint claims in the law of the sea debate.¹⁰ Questions such as archipelagos might find sub-regional support in South Asia and the issue of passage through straits has been treated for the Straits of Malacca by a joint declaration in 1971 by Indonesia and Malaysia which claimed that the Strait was "no longer an international waterway."¹¹ But, as will be discussed in the following section, most Asian sub-regions share the discord of the Asian region as a whole.

REGIONAL LAW OF THE SEA AS A MEANS OF PROVIDING FOR THE EFFICIENT USE OF REGIONAL WATERS

Regional law of the sea can be much more than an expression

9. Organization of African Unity, Council of Ministers, Addis Ababa Declaration on the Issues of the Law of the Sea, May 24, 1973, A/AC.138/89, reprinted in 5 BULL. PEACE PROPOSALS No. 1, at 31 (1974).

10. Pinto, *Problems of Developing States and Their Effects on Decisions on Law of the Sea*, in THE LAW OF THE SEA: NEEDS AND INTERESTS OF DEVELOPING COUNTRIES 3, 5 (Proceedings of the Seventh Annual Conference of the Law of the Sea Institute, 1972).

11. Leifer, *Continuity and Change in Indonesian Foreign Policy*, 60 ASIAN AFFAIRS 179 (June 1973).

of national maritime claims coordinated and promoted regionally. If the States within a region choose, regional law of the sea can be a means of providing for the efficient use of regional waters. In this second category, regional law regulates regional maritime activities, and, as such, is a form of supra-national law. The advantages of regional supra-national law of the sea are much the same as the much heralded advantages of international supra-national law of the sea. Waters regulated regionally as opposed to nationally can be better protected against over-fishing and pollution. In regional waters it is easier and more efficient to provide for the exploitation of non-living resources and for the enforcement of legal rules of all sorts. Especially where quite a number of nations share coasts of the same sea or ocean, regional law of the sea seems an obvious way to provide for the efficient exploitation and protection of regional waters.

Perhaps the best known examples of regional co-operation are the worst examples of how regional maritime governance should work, i.e., the regional fishery organizations. Of some twenty-three regional fishery organizations only eight really have any avowed management functions; only three attempt to divide the catch among their members; and none attempt to prevent non-members from fishing as they like.¹² Little ventured, little gained; it is not surprising that the reputation of the fishery organizations is notorious.

The most successful example of regional law of the sea as a means of providing for the efficient use of regional waters is to be found in Western Europe. There, the most significant advance has been made in the Common Fisheries Policy of the European Community.¹³ According to the 1957 Treaty of Rome establishing the Common Market:

The Common Market shall extend to agriculture and trade in agricultural products. Agricultural products shall mean the products of the soil, of stock-breeding and of fisheries. . . .

. . . restrictions on the freedom of establishment of nationals of a Member State in the territory of another Member State shall be

12. Friedheim, *International Organizations and the Uses of the Ocean*, 9 INTERNATIONAL COOPERATION 242-51 (Jordan ed. 1972).

13. M. Janis, *The Development of European Regional Law of the Sea*, 1 OCEAN DEV. & INT'L L.J. 275 (1973) [hereinafter cited as Janis].

progressively abolished in the course of the transitional period. . . .¹⁴

A common market in fisheries and freedom of establishment means, in theory, that the territorial waters of every Member State should be opened to the fishermen of every other Member State. In practice, it took the European Community a long time to make national fishing zones regional fishing waters. Less efficient French and Italian fishermen were understandably reluctant to welcome Dutch, German, and Belgian fishing fleets, but in June 1970 the Council of the European Community, the rule-making body, made equal access Common Market policy.¹⁵ And in October 1970, Regulation 2141/70 creating the Common Fisheries Policy was issued, to come into effect in February, 1971:

(1) With a view to promoting harmonious and balanced development of the fishing industry within the general economy and to encouraging rational exploitation of the biological resources of the sea and of inland waters, a common system shall be adopted for fishing in maritime waters, together with specific measures with a view to appropriate action and the coordination of Member States' structural policies in this sector.

(2) The system applied by each Member State in respect of fishing in the maritime waters coming under its sovereignty or within its jurisdiction must not lead to differences in treatment with regard to other Member States.

In particular, Member States shall ensure equal conditions of access to and exploitation of the fishing grounds situated in the waters referred to in the preceding paragraph, for all fishing vessels flying the flag of a Member State and registered in a Community territory. . . .

(5) Where fishing in the Member States' maritime waters as referred to in Article 2 lays certain of their resources open to the risk of over intensive exploitation, the Council may, acting on a proposal from the Commission under the procedure provided for in Article 43(2) of the Treaty, adopt the necessary conservation measures.

In particular, these measures may include restrictions relating to the catching of certain species, to zones, periods, methods and to fishing tackle.¹⁶

Although some 3-mile zones may be protected for national fishermen for five years "if that population depends primarily on inshore fishing,"¹⁷ the Common Fisheries Policy has largely replaced national territorial fishing waters with regional territorial fishing wa-

14. European Economic Community, Treaty Establishing the European Economic Community and Connected Documents, Publishing Service of the European Communities, 1965, at 47, 59.

15. Janis, *supra* note 13, at 279-81.

16. European Communities Regulation No. 2141/70 of the Council of 20 October 1970 on the establishment of a common structural policy for the fishing industry, 1 *NEW DIRECTIONS IN THE LAW OF THE SEA: DOCUMENTS* 50-51 (Lay, Churchill & Nordquist eds. 1973) [hereinafter cited as Lay].

17. *Id.* at 51.

ters. Not only can the Community take conservation measures as mentioned in article (5) above, but it is able to restructure the fishing industry, as it did in 1972 when it encouraged, through incentives, Community fishermen to switch from cod fishing to tuna.¹⁸ In 1973 the Community considered conservation measures for Greenland and the Faroes and even proposed extending the 12-mile fishing limit off those islands.¹⁹ If fishing limits are generally expanded to 200 miles by the Geneva or second Caracas conference, most of the North Sea, much of the Mediterranean, and a good part of the north-east Atlantic will become the regional fishery waters of the European Community.

But there are some important limitations to the regional maritime organization of Western Europe. Many Western European States with important fisheries are not included. When the "Six" negotiated entrance for Great Britain, Ireland, and Denmark, the Common Fisheries Policy was one of the biggest stumbling blocks and the three new members gained ten-year transition periods. Norway rejected the Common Market by a referendum in which opposition to the Common Fisheries Policy was paramount; the "No" vote in Norwegian fishing areas ran up to ninety-three per cent.²⁰ Iceland and Spain are not members of the Community. Thus, the regional jurisdiction of the Community does not encompass the entire region.

The other significant limitation to the maritime control of the European Community is with regard to non-living resources. The Community did decide in 1970 that continental shelf activities did fall within the realm of EC regulations.²¹ But there is no effective Community control of offshore oil or gas exploitation.²² And the Community, at this time, only seeks to provide for freedom of movement and establishment, not to govern offshore resources.²³

18. *EC Fish Priorities: Salt Cod Out; Tuna In*, EUROPEAN COMMUNITY, February 1972, No. 153, at 6.

19. *Community to Protect Fishing Grounds*, EUROPEAN COMMUNITY, December 1973, No. 171, at 4.

20. Janis, *supra* note 13, at 281.

21. European Economic Community, 3 BULL. OF THE EUROPEAN COMMUNITIES No. 11, at 48 (1970).

22. McLin, *Resources and Authority in the North Atlantic: Part I: The Evolving Politics and Law of the Sea in Northern Europe*, 8 FIELDSTAFF REPORTS No. 5, at 10-11 (1973).

23. Written Question No. 489/73 by Lord O'Hagen to the Commission of the European Communities, European Communities, 16 OFFICIAL JOURNAL, April 27, 1974, No. C 49/3, reprinted in 13 INT'L LEGAL MATERIALS 709 (1974).

It is unlikely that any regional maritime policy will effectively control the shelf until the Community reaches an accord concerning energy in general.

The Community's record is somewhat brighter concerning pollution and environmental protection. According to a 1973 Declaration, the EC has begun a "Programme of Action on the Environment," part of which includes control of marine pollution.²⁴ Although it is too early to judge whether the regional organization will successfully deal with environmental problems, there seem to be fewer internal disputes about the need and nature of pollution control than there are about an issue such as energy use and exploitation.

Outside the Common Market there have been other attempts to create European regional law of the sea, for example the "Agreement for the Prevention of Broadcasts transmitted from Stations outside National Territories" in 1965 by the Council of Europe and the new 1974 Baltic Pollution Convention by the Helsinki Conference.²⁵ But these other accords are more similar to the coordinating mechanisms of the first category than they are like the governing mechanisms of this second category and the European Community. It is unlikely that any other European organization, at this time, can hope to be as effectively supra-national as the European Community.²⁶

And the record of regional activities outside of Europe does not show that there have been successful attempts to use regional law of the sea to provide for the efficient use of regional waters in other areas of the world. There have been, however, numerous proposals and arguments for the establishment of regional maritime communities. For the Caribbean, for example:

The application of the patrimonial sea concept could lead to an important example in regional cooperation for ocean development if it were to be applied in a creative way; that is, if the nations surrounding a semi-enclosed sea were to claim jurisdiction over a

24. Declaration of the Council of the European Communities and of the Representatives of the Governments of the Member States Meeting in the Council of November 22, 1973 on the Programme of Action of the European Communities on the Environment, European Communities, 16 OFFICIAL JOURNAL, December 20, 1973, No. C 112, reprinted in 13 INT'L MATERIALS 164 (1974).

25. European Agreement for the Prevention of Broadcasts transmitted from Stations outside National Territories, Strasbourg, January 22, 1965, in Lay, *supra* note 16, at 270-74; and Convention on the Marine Environment of the Baltic Sea Area, adopted at the Diplomatic Conference on the Protection of the Marine Environment of the Baltic Sea Area, Helsinki, March 18-22, 1974, in 13 INT'L LEGAL MATERIALS 546 (1974).

26. Janis, *supra* note 13, at 284-88.

patrimonial sea to a maximum limit of 200 miles, and then create an organization which would manage the major portion of this area for the common benefit.²⁷

However, in practice the Caribbean nations have been reluctant to create an effective regional organization for maritime questions.²⁸ In their Santo Domingo Declaration of 1972 the Caribbean States recognized the advantages of regional organization while committing themselves only to "periodic meetings" and coordination:

(1) Recognizing the need for the countries in the area to unite their efforts and adopt a common policy vis-a-vis the problems peculiar to the Caribbean Sea relating mainly to scientific research, pollution of the marine environment, conservation, safeguarding and exploitation of the resources of the sea;

(2) Decide to hold periodic meetings, if possible, once a year, of senior governmental officials, for the purpose of coordinating and harmonizing national efforts and policies in all aspects of oceanic space with a view of ensuring maximum utilization of resources by all the peoples of the region.²⁹

Similarly, in Africa there are many good reasons why some type of African regional maritime organization should be formed. It could provide for the sharing of resources with land-locked and shelf-locked States; it could protect extended territorial zones when weak States with narrow coastlines might be unable to protect the zones themselves; it could conduct negotiations with potential resource exploiters and secure higher prices; it could settle serious jurisdictional disputes like that between Gabon and Equatorial Guinea over the island of Mbanie surrounded by rich oil deposits. But thus far the Organization of African Unity and the Economic Commission for Africa have only ventured to coordinate national policies. There are no signs of effective regional machinery developing.³⁰

And the same good reasons exist for regional machinery in Asia or in its sub-regions:

27. D. Krieger, *A Caribbean Community for Ocean Development*, 18 INT'L STUDIES Q. No. 1, at 75-103 (1974).

28. H. Gary Knight, *Rapporteur's Report*, in GULF AND CARIBBEAN MARITIME PROBLEMS 42-49 (Regional Workshop of the Law of the Sea Institute 1972).

29. Declaration of Santo Domingo, June 7, 1972 in Lawy, *supra* note 16, at 247-49.

30. M. Janis, *The Development of African Regional Law of the Sea*, unpublished paper, at 17-21.

Thus it is simply imperative for the coastal States to realize the importance of regional arrangements for this area; since one of them can destroy what will take all of them to restore.³¹

But Asian waters are especially troubled by disputes. South Vietnam and China battled over the ownership of the oil-rich Paracels.³² The Chinese, Japanese, and Koreans have long quarrelled about fishing.³³ Now the same peoples are in serious disagreement about offshore oil rights.³⁴ Asia may not soon be witnessing a growth of regional maritime machinery.

Thus, outside of Western Europe, though there are good reasons for the emergence of regional law of the sea to provide for the efficient use of regional waters, there are few hopes that effective organizations will be forthcoming in the near future. No matter how great the benefits of regional control, unless regional actors can settle outstanding political differences it is improbable that effective regional governments will be formed. It is illustrative that the only successful regional maritime regime, that in Western Europe, is the result not of recognition of the inherently good reasons for a regional maritime policy but of a larger process of regional economic integration. It is doubtful that the Common Fisheries Policy could have been established without the prior establishment of the Common Market.

This is not to say that regional organizations will not be used to coordinate national maritime policies. This process, described in one work as the creation of a "framework of demands,"³⁵ does not demand regional governance or a great degree of supra-nationalism. Rather, the coordination of national maritime policies on a regional basis needs only a reasonable degree of shared legal preferences as described in the previous section of this paper. Indeed, if a regional organization were to regularly deal with coordination of national policies it would largely be no more than the institutionalization of the "promoting" activities already done by regions on an ad hoc basis. Besides promoting regional claims against outsiders, an institutional means of voicing regional preferences could be an effective way of settling inter-regional disputes. But there is a con-

31. CHOON-HO PARK, *FISHERIES ISSUES IN THE YELLOW SEA AND THE EAST CHINA SEA* 23 (Law of the Sea Institute, Occasional Paper No. 18, Kingston, R.I., 1973).

32. N.Y. Times, February 6, 1974, at 3.

33. Park, *supra* note 31, at 1-23.

34. Gittings, *Asian Scramble for Oil*, THE GUARDIAN WEEKLY, August 18, 1973, at 5; N.Y. Times, February 17, 1974, § 4, at 3.

35. Dupuy & Piquemal, *National Appropriation of Maritime Areas*, Institut du droit de la paix et du developpement, Montpellier Conference, May 25-27, 1972, at 25.

siderable difference between regional organizations used in this fashion to coordinate and regional organizations used to provide for the efficient use of regional waters. In the latter case regional law of the sea is the result of a regional authority, in the former only of a regional consensus. A regional authority could not only fulfill the function of a regional consensus but provide for the efficient exploitation and environmental protection of regional seas. Although there are signs of regional consensus in several areas, e.g., Latin America and Africa, the only signs of regional authority are in Western Europe.

REGIONAL LAW OF THE SEA AS A MEANS OF SHARING REGIONAL
OCEAN RESOURCES WITH REGIONAL LAND-LOCKED
OR SHELF-LOCKED STATES

A third role which regional law of the sea may play is in helping land-locked and shelf-locked States share in the wealth of the oceans. This role has received increased attention as a result of the proceedings of the Caracas Conference. The delegation from Paraguay spoke for the land-locked States:

Only when they enjoyed equal rights in the economic zones of their regions beyond the 12-mile limit which should be the maximum for the new law of the sea, would there be unanimous support for the new law of the sea.³⁶

The delegation from Uganda demanded "the right to exploit not only living resources but others as well—including mineral resources, be they manganese, tin, or diamonds."³⁷ Austria asked for "participation" in the fishing zones of "neighboring coastal States."³⁸ Nepal believed it should be compensated for its inability to claim the ocean's non-living resources.³⁹ There are twenty-six major States which are land-locked. Many others, like Zaire and Iraq, have coastlines much shorter than those of most other countries. These are the States which will lose the most by the establishment of 200-mile territorial seas or exclusive economic zones

36. Statement of the Delegate from Paraguay, U.N. Press Release, SEA/57, at 3 (July 12, 1974).

37. Statement of the Delegate from Uganda, U.N. Press Release, SEA/59, at 2 (July 15, 1974).

38. Statement of the Delegate from Austria, U.N. Press Release, SEA/57, at 3 (July 12, 1974).

39. Statement of the Delegate from Nepal, U.N. Press Release, SEA/59, at 2-3 (July 15, 1974).

in place of the creation of an international oceanic regime over most of the ocean's resources. Now that it seems increasingly unlikely that extensive coastal State jurisdictions can be prevented, land-locked and shelf-locked States are turning to a form of regional law of the sea to secure a share of ocean wealth.

The area in which developments for regional law of the sea as a means of sharing resources with land-locked or shelf-locked States is most pronounced is Africa. This should be no surprise since more than half of the world's land-locked States are African, fourteen in all: Mali, Upper Volta, Niger, Chad, Central African Republic, Uganda, Rwanda, Burundi, Zambia, Malawi, Southern Rhodesia, Botswana, Swaziland, and Lesotho. Altogether, almost one-third of the African countries have no sea coast; if the resources of the ocean were divided by length of coastline they would get no share whatsoever.

The declarations of the African region, more than those for any other area, present the case for the land-locked States:

The exploitation of the living resources within the economic zone should be open to all African States both land-locked and near land-locked, provided that the enterprises of these States desiring to exploit these resources are effectively controlled by African capital and personnel.

To be effective, the rights of land-locked States shall be complemented by the right of transit.

These rights shall be embodied in multilateral or regional or bilateral agreements.⁴⁰

. . . .

The African countries recognize, in order that the resources of the region may benefit all peoples therein, that the land-locked and other disadvantaged countries are entitled to share in the exploitation of living resources of neighboring economic zones on equal basis as nationals of coastal States on bases of African solidarity and under such regional or bilateral agreements as may be worked out.⁴¹

Despite the good record of African pronouncements, there are no regional laws for sharing ocean resources at the present time. The problems faced by land-locked and shelf-locked States are many. Even the relatively generous African declarations provide only for sharing "living" resources; the coastal States are not at all eager to distribute the profits from offshore oil, gas, and minerals. Whether a disadvantaged country seeks living or non-living resources, it will be difficult to determine which coastal State should give up part of its share to which land-locked or shelf-locked State. This determination could be better made by a regional authority, but as the previous section of this paper demonstrated, the pros-

40. Yaoundé, *supra* note 8, at 210-11.

41. Addis Ababa, *supra* note 9, at 31.

pects for such an authority in Africa or most places are poor. If land-locked States are to use only their own capital and personnel, how will they find either? The coastal African States rely greatly on foreign capital and training themselves. Altogether, it seems that rights of use and transit will be of less utility to the disadvantaged African States than a simple direct share of the profits from ocean resources. But such an outright payment is not likely to be made by the coastal States.

If there are difficulties for African land-locked States, problems are only greater for disadvantaged States elsewhere. In Latin America attempts to have the Santo Domingo Conference even address the plight of land-locked States were frustrated.⁴² There are only two land-locked Latin American States, Bolivia and Paraguay, and they are relatively less important to their region than the fourteen land-locked States of Africa. The five land-locked European States (Switzerland, Austria, Luxembourg, Czechoslovakia, and Hungary) and five land-locked Asian States (Afghanistan, Nepal, Bhutan, Laos, and Mongolia) face the same problems of being severely regionally out-numbered.

Although it is possible that disadvantaged States will reach bilateral or multilateral agreements to share ocean wealth, it is likely that these will be gained through the normal process of diplomatic bargaining, that they will have to trade political support or some other commodity to win a slice of profit from neighboring coastal States. On a regional basis, only Africa seems to have sufficient numbers of land-locked and allied States to secure a regional accord assuring disadvantaged States some portion of the gain from the extended exclusive economic zones. In Africa on a continent-wide basis there might be some realistic hope that some provision is made for non-coastal countries, but even so, it will probably still be up to bilateral negotiation to determine exactly how great a provision will be made in each case.

For land-locked and shelf-locked States everywhere, though, a decision at the forthcoming law of the sea conferences to include rights for them in the economic zones would be of assistance in the regional negotiations which will almost surely occur. Developing coastal States, especially, are vulnerable to criticism if, after claiming economic zones to promote their development, they de-

42. Aguilar, *The Patrimonial Sea*, in Alexander, *supra* note 28, at 163.

prive the land-locked and shelf-locked States of a reasonable share of ocean resources. These disadvantaged States, after all, are on the whole poorer than their coastal neighbors.

CONCLUSION

The development of regional law of the sea has had three discernible objects: the promotion of shared legal claims, the provision for the efficient use of regional waters, and the sharing of resources with disadvantaged regional countries. A different geographical area has been responsible for the principal development for each of the three objects. Latin America has seen the most effort to coordinate and promote a shared legal claim, i.e., the 200-mile territorial sea. Western Europe has witnessed the most successful venture to provide for the efficient use of regional waters, i.e., the Common Fisheries Policy of the European Community. And Africa has generated the most advanced proposals for assuring regional land-locked and shelf-locked States a share of regional maritime resources.

The record for regional law of the sea has been and likely will remain very spotty. One of the advantages of a regional approach to maritime problems is that different regions will be able to handle their law of the sea matters in different ways. That Latin America is so engaged in promoting regional preferences against the United States, that Western Europe is developing a regional maritime machinery, that Africa is so concerned with the predicament of the land-locked countries, all these are healthy regional variations. That some areas, especially Asia, are so unable to agree, is indicative of the region's real divisions.

Regional law of the sea can supplement international law of the sea if the latter is ever drafted. It is doubtful that one hundred-fifty nations will be able to ever write a law of the sea treaty more detailed than that which could be written by two dozen or more regional States. However far international law goes in better ordering the oceans, it is likely that regional law, in most regions, will be able to go further. Not that regional legal solutions are likely to agree. They are not. As the laws of States vary, so regional laws will vary with regional preferences and so will the nature of regional laws differ. Some geographical areas, perhaps Western Europe, may evolve a regional law of the sea which is supra-national and governing. Other areas, perhaps Latin America, will simply coordinate national maritime policies. Certainly, the eventual legal nature of the oceans will be confused as a result. But it will be a good deal less confused than if no regional law existed to modify national jurisdictions at all.